

ADOT JPA File No.: 05-073
AG Contract No.: KR05-1156TRN
Project No.: HRF-SLW-0-820
Project: Penrod Roadway Improvements
Section: SR 77-Porter Mountain Road
TRACS No.: HF120 01C
Budget Source Item No.: HURF

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SHOW LOW

THIS AGREEMENT is entered into this date January 17, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SHOW LOW, acting by and through its MAYOR and CITY COUNCIL (the "City").

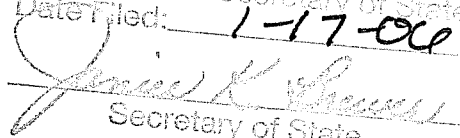

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for the roadway construction of Penrod Road, from State Route (SR) 77 Porter Mountain Road in the City of Show Low. Such funds shall be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG), Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27935
Filed with the Secretary of State
Date Filed: 1-17-06

Secretary of State
By: 

A Federal Fiscal Year to be Processed	B STP Apportionment to be Charged to NACOG	C STP Obligation Authority to be Charged to NACOG	D HURF Funds to be Transferred to Show Low
FFY 2005	\$635,250.00	\$655,599.00	\$590,039.00
Total	\$635,250.00	\$655,599.00	\$590,039.00

II. SCOPE OF WORK

1. The City shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the roadway reconstruction project of Penrod Road from SR 77 to Porter Mountain Road.

b. Be responsible for any contractor claims required for design of the project for extra compensation due to delays or whatever reason attributable to the City.

c. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims required to complete the project for extra compensation due to delays or whatever reason attributable to the City. Comply with all applicable State Laws, Rules and Regulations.

d. Invoice the State for thirty percent (30%) of the cost of construction upon award of the construction project. Total payment by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year in which the billing is made.

e. Invoice the State for 30% of the cost of construction when the project reaches the 30% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year in which the billing is made, plus any carryover amounts not previously paid in prior years.

f. Invoice the State for 30% of the cost of construction when the project reaches the 60% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year in which the billing is made, plus any carryover amounts not previously paid in prior years.

g. Upon satisfactory completion of construction, approve and accept the project on behalf of the City, provide for the maintenance, at its own expense. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

h. Invoice the State for 10% of the cost of construction when the project has been satisfactorily completed and accepted by the City. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year in which the billing is made, plus any carryover amounts not previously paid in prior years.

2. The State shall:

a. Withhold from NACOG Federal Funds and the Obligation Authority of Federal Funds in an amount of \$655,599.00 for roadway **construction** of Penrod Road from SR 77 to Porter Mountain Road.

b. Within thirty-days (30) after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of 30% at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices, advance the City HURF Funds or the remaining 10% of \$590,039.00 in 2005 for the final roadway improvements of Penrod Road from SR 77 to Porter Mountain Road.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Show Low
Attn: Kenneth Patterson
200 W. Cooley
Show Low, Arizona 85901
(928) 532-4091

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

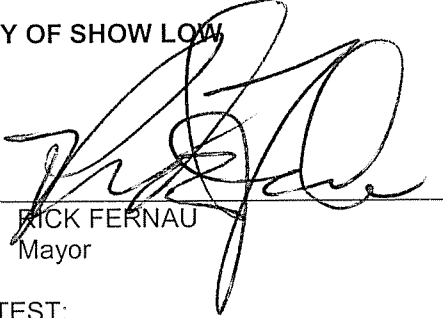
9. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Amended Agreement the day and year first above written.

CITY OF SHOW LOW

By


RICK FERNAU
Mayor

ATTEST:


By


ANN KURASAKI
City Clerk

STATE OF ARIZONA

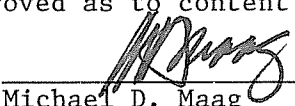
Department of Transportation

By


DALE BUSKIRK
Division Director

Approved as to content:

By:


Michael D. Maag

G:05-073-Show Low-Penrod Rd-HURF-10Aug05-slc

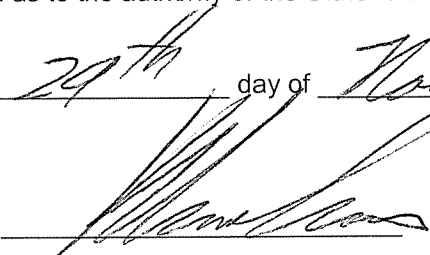
JPA 05-073

APPROVAL OF THE CITY OF SHOW LOW

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29th day of November, 2005.


City Attorney K. Kane Graves

CITY OF SHOW LOW RESOLUTION NO. R2005-71

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF
SHOW LOW, ARIZONA APPROVING AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY OF SHOW LOW AND THE
STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR
ROADWAY RECONSTRUCTION OF PENROD ROAD**

RECITALS:

WHEREAS, the State of Arizona, Department of Transportation, is empowered by A.R.S. §§ 28-401 and 11-951 through 11-954 to enter into this agreement with the City of Show Low; and

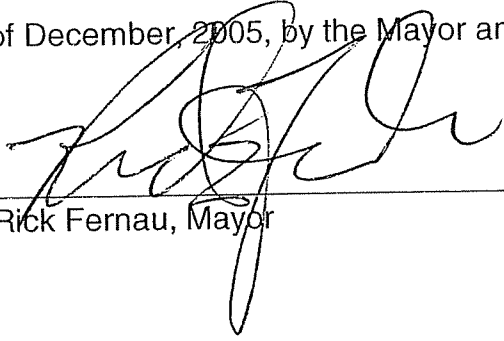
WHEREAS, the City of Show Low is empowered by A.R.S. §§ 9-240 and 11-951 through 11-954 to enter into this agreement with the State of Arizona; and

WHEREAS, the State and the City mutually desire to participate in the design and construction shoulder safety improvements along Penrod Road from SR77 to Porter Mountain Road.

ENACTMENT:

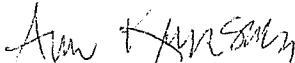
NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Show Low, Arizona, hereby approve an Intergovernmental Agreement between the City of Show Low and the State of Arizona, Department of Transportation, for the design and construction of shoulder safety improvements along Penrod Road from SR77 to Porter Mountain Road.

PASSED AND ADOPTED this 20th day of December, 2005, by the Mayor and Council of the City of Show Low, Arizona.



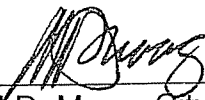
Rick Fernau, Mayor

ATTEST:




Ann Kurasaki, City Clerk

APPROVED AS TO CONTENT:




Michael D. Maag, City Manager

APPROVED AS TO FORM:



K. Kane Graves, City Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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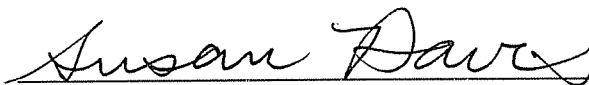
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1156TRN (**JPA 05-073**), an Agreement between public agencies, i.e., The State of Arizona and The City of Show Low, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 10, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:942141
Attachment